IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

(1) CRIMINAL APPEAL No. 136 of 2006
(Old No. 1346 of 1993)

Naveen Singh S/o Arjun Singh, R/o 1920 Paliwal Gate, Mahargarh Road, Jaipur

.... Appellant

Versus

The State

... Respondent

(2) CRIMINAL APPEAL No. 137 of 2006
(Old No. 1322 of 1993)

J.R. Chauhan @ Jagdish Chandra Ram Chandra Chauhan, S/o Sri Ram Chandra Chauhan, R/o 7 Madhuban Kunj, New Adarsh Nagar, Balkeshwar, P.S. New Agra, Distt. Agra

.... Appellant

Versus

The State

... Respondent

Sri K.S. Verma, ld. counsel for appellant (CRLA No.136/06)
Sri Basvanand Maulekhi, learned amicus curiae for the appellant (CRLA No. 137/06)
Sri Arvind Vashisth, ld. counsel for CBI

Dated: December 6, 2007

HON. DHARAM VEER, J.

Both these appeals have been preferred against the common judgment and order-dated 22.07.1993 passed by Additional District Judge/Special Judge, Anti Corruption U.P. (East), Dehradun in CBI Case No.4/1984, CBI v. J.R. Chauhan & others, whereby the appellant J.R. Chauhan was held guilty for an offence punishable u/s 120-B/420 of IPC and u/s 5(2) r/w Section 5(1)(d) of Prevention of Corruption Act, 1947. He was convicted for three months R.I. u/s 120-B IPC; for one year R.I. u/s 420 IPC and for three years R.I. u/s 5(2) r/w 5(1)(d) of Prevention of Corruption Act, 1947 (Act II of 1947). Appellant Naveen Singh and co-accused Arjun Singh were convicted u/s 120-B/420/468/471 IPC and u/s 5(2) r/w Section 5(1)(d) of

Prevention of Corruption Act, 1947. They were sentenced to three months R.I. u/s 120-B of IPC; one year u/s 420 IPC; three years R.I. u/s 468 IPC; three years u/s 471 IPC and three years R.I. u/s 5(2) r/w 5(1)(d) of Prevention of Corruption Act, 1947. It was also directed that all the sentences of all the accused persons would run concurrently.

2. On 27.8.2007, this Court directed the District Judge, Dehradun to send a specific report within one week about the record of the present CBI case No.4/1984. In compliance of that order, Special Judge, Anti-Corruption (CBI) Dehradun vide his letter dated 7.9.2007 has informed that he has not received any document or information either from the appellants or from the SP, CBI, New Delhi. Hence he has submitted that he could not give any specific report about the reconstruction of the record. On 6.6.2007, 18.7.2007, 7.8.2007 and 27.8.2007, learned counsel for the CBI was granted time for reconstruction of record. Now, today Arvind Vashisth, ld. counsel for CBI has filed a copy of letter dated 23.8.2007 sent by CBI, New Delhi in which it is stated that all out efforts were made to trace out the depositions of the witnesses recorded during the trial of this case but the same could not be traced out as the matter is pretty old. It has also been stated that the records of the case are not traceable at this belated stage. Hence, Sri K.S. Verma, learned counsel for appellant (CRLA No.136/06), Sri Basvanand Maulekhi, ld. amicus curiae for appellant (CRLA No.137/06) and Sri Arvind Vashisth, ld. counsel for CBI, all have stated that after passing of the order dated 22.07.1993 which is under challenge, now the period of 14 years has been expired. They further submitted that the incident had occurred between the years 1979-1980 and the FIR of the case was lodged on 9.2.1981 and in this

way also, the period of 28 years from the year of commencement of incident has expired. All of them have also submitted that now the reconstruction of the record or retrial is not possible. In a judgment rendered by Allahabad High Court in the case of *Aziz Khan Vs. State of U.P. reported in ACC 1992 (29) 223,* it was held as under: -

> ***"Where record has been lost or destroyed and it is not possible to reconstruct the record, it will not be just or proper to direct the retrial of the case if a long gap has elapsed since the commission of the offence. The occurrence had taken place on 15.10.1976 i.e. 15 years back and the complete record has not been reconstructed; Applying the principle laid down in the above mentioned authorities, we are of the opinion that the appeal of Aziz Khan should be allowed and his conviction and sentence should be set aside and the government appeal against acquittal of accused-respondents is liable to be dismissed."***

3. In view of the above, both the appeals are allowed. The judgment and order dated 22.07.1993 passed by Additional District Judge/Special Judge, Anti Corruption U.P. (East), Dehradun is set aside. The conviction and sentence of the appellants as awarded by the trial court is hereby set aside and they are acquitted of the charges levelled against them.

(Dharam Veer, J.)

Rajeev Dang